

Message Text

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ACTION XMB-04

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TO SECSTATE WASHDC 7691
INFO AMEMBASSY BRASILIA
AMCONSUL RIO DE JANEIRO

UNCLAS SAO PAULO 1171

E.O.11652: N/A
TAGS: EFIN, BR
SUBJECT: PARANAPANEMA S. A. FCIA CLAGDM-723-J

REF: A) STATE 088667 B) SAO PAULO 0729 OF 4/2/76

1. FOLLOWING IS CORRECTION TO PARA 1 REFTEL: UNDER THE CONCORDATA, THE DEBTOR WAS TO DEPOSIT REPEAT DEPOSIT WITH THE COURT 40 PERCENT OF OUTSTANDING DEBT ON 3/24/77.

2. UNDER THE TERMS OF THE CONCORDATA, THE 40 PERCENT DEPOSIT MADE AT THE END OF THE FIRST YEAR OF THE CONCORDATA, I. E. , 3/24/77, IS TO BE HELD BY THE COURT. ONLY AFTER THE SECOND YEAR OF THE CONCORDATA, WHEN THE OTHER 60 PERCENT WOULD FALL DUE, WOULD THE COURT DISTRIBUTE THE COLLECTED FUNDS TO THE CREDITORS.

3. SINCE THE DEPOSIT WAS NOT MADE ON 3/24/77, FCIA'S LAWYERS REQUESTED BANKRUPTCY. THE COURT , HOWEVER, ACCEPTED AS A DEPOSIT ACCOUNTS RECEIVABLES OWED PARANAPANEMA BY ENGEFER AND REFUSED THE BANKRUPTCY REQUEST. IN ANY CASE, THE PLEDGED ACCOUNTS RECEIVABLES WILL NOT BE MADE AVAILABLE TO THE CREDITORS UNTIL THE PERIOD OF THE CONCORDATA HAS ELAPSED, 3/78.

4. IN OTHER WORDS, CONCORDATA IS PROCEEDING RELATIVELY SMOOTHLY. ENGEFER EVENTUALLY WILL BE PAID BY THE GOVERNMENT FOR SERVICES OWED
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AND WILL TRANSFER THE NECESSARY FUNDS TO THE COURT. ONE DRAWBANK OF THE PROCESS, OF COURSE, IS THAT THE CRUZEIRO - DENOMINATED DEBT DECLARED IN THE CONCORDATA IS NOT RECEIVING MONETARY CORRECTION AND, THUS, FCIA IS SUFFERING FOREIGN EXCHANGE LOSSES BECAUSE OF THE PERIOD IC DEVALUATION OF THE CRUZEIRO. HOWEVER, THE DEBT, WHICH INCLUDES THE PRINCIPLE AND INTEREST DUE ON EACH NOTE, IS EARNING 12 PERCENT PER

YEAR.

5. FIRST POSSIBLE COURSE OF ACTION IS TO WAIT FOR TWO YEAR PERIOD OF CONCORDATA TO ELAPSE AND COLLECT THEN. PROBLEM IS THAT FCIA WILL ONLY RECEIVE, ACCORDING TO THE TERMS OF THE CONCORDATA, THE DOLLAR EQUIVALENT OF THE PRINCIPLE STATED IN CRUZEIROS ON MARCH 1976 PLUS 12 PERCENT INTEREST PER YEAR. IN OTHER WORDS, FCIA WILL SUFER EXCHANGE LOSSES OF APPROXIMATELY 20 PERCENT PER YEAR.

6. SECOND COURSE WOULD BE APPEAL THE BANKRUPTCY RULING AND PROCEED WITH LEGAL ACTION AGAINST THE DIRECTORS WHO SIGNED THE NOTES. FRANCESCHINI FEELS THIS A VIABLE OPTION AND ASSURES US AN APPEAL WOULD RESULT IN A BANKRUPTCY RULING. WE BELIEVE, HOWEVER, THAT BANKRUPTCY WILL PROBABLY NOT BE DECLARED BECAUSE: 1) DEPOSIT REQUIREMENTS OF THE CONCORDATA HAVE BEEN FULFILLED TO THE SATISFACTION OF THE COURT, 2) PARANAPANEMA HAS BEEN RESOLVING ITS DEBT OBLIGATION UNDER THE CONCORDATA AND HAS MANAGED TO SOLVE ITS PROBLEMS WITH CITIBANK AND BANK OF BOSTON (IMPORTANT DIFFERENCE IS THAT THESE BANKS HAD LIENS), EVIDENCE THAT THE FIRM'S FINANCIAL SITUATION IS IMPROVING, AND 3) POLITICAL CONSIDERATIONS IN THIS CASE PROBABLY ARE ENOUGH TO PROHIBIT A BANKRUPTCY RULING, ESPECIALLY GIVEN AN IMPROVING FINANCIAL RECORD. LEGAL ACTION AGAINST THE DIRECTORS IS STALLED WAITING FOR EVIDENCE OF THE SIGNED NOTES TO BE TURNED OVER TO THE COURT.

7. THIRD COURSE IS TO BE SETTLE THE MATTER EXTRA-JUDICIALLY. HOWEVER, FIRST WISCONSIN REPRESENTATIVE ARTURO J. C. ALCORTA BELIEVES THIS OPTION VIABLE ONLY IF FCIA CONTRACTS ANOTHER LAWYER BECAUSE, HE IMPLIED, PARANAPANEMA REFUSES TO DEAL OUT OF COURT WITH FRANCESCHINI, UNCLASSIFIED

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ALCORTA IS VERY UNIMPRESSED WITH FRANCESCHINI AND RECOMMENDED NELSON LARA DE OLIVEIRA RIBEIRO, A PERSONAL FRIEND AND DISTANT RELATIVE. RIBEIRO, SON OF A VERY PROMINENT SAO PAULO FAMILY, ASSURED US THAT HE COULD COLLECT THE PRINCIPLE AND ACCRUED INTEREST THROUGH PERSONAL CONTACTS WITH PARANAPANEMA.

8. ON THE OTHER HAND, PARANAPANEMA FINANCIAL DIRECTOR JORGE DIAMANT BELIEVES THAT AN OUT-OF-COURT SETTLEMENT, SIMILAR TO ONES ACHIEVED WITH CITIBANK AND BANK OF BOSTON AND INVOLVING A DEBT RESCHEDULING, IS A DISTINCT POSSIBILITY. HOWEVER, HE WILL NOT BE ABLE TO NEGOTIATE FOR AT LEAST THIRTY TO FORTY-FIVE DAYS. HE INSISTS ON THIS DELAYS BECAUSE HE WILL NOT ENTER INTO RESCHEDULING WITHOUT BEING ASSURED HE HAS THE NECESSARY CASH FLOW AND RESOURCES TO MAKE THE PERIODICAL PAYMENTS. DIAMANT SAYS HE HAS NO LAWYER PREFERENCE AND WILL NEGOTIATE WITH ANY LAWYER AUTHORIZED BY FCIA. DIAMANT WOULD, HOWEVER, LIKE TO KNOW IF HE IS TO NEGOTIATE RESCHEDULING WITH FIRST WISCONSIN OR FCIA. HE HAS ONLY BEEN APPROACHED ONCE BY TELEPHONE BY AN ASSOCIATE OF FRANCESCHINI.

9. COMMENT AND RECOMMENDATION: PARANAPANEMA'S FINANCIAL POSITION HAS IMPROVED. SALES FROM MINING OPERATIONS CONTINUE TO INCREASE. CONSTRUCTION ACTIVITY, HOWEVER, IS FLAT AND GOVERNMENT HAS BEEN EXCEEDINGLY SLOW IN MAKING PAYMENTS. FIRM OPERATING ONLY ON INTERNAL RESOURCES SINCE 1975. JURIDICAL DISPUTE WITH INPS DESCRIBED IN REFTEL B) STILL NOT RESOLVED AND PROBABLY WILL NOT BE RESOLVED UNTIL THERE IS A CHANGE IN GOVERNMENT ADMINISTRATIONS. RESULT IS THAT PARANAPANEMA HAS SIGNIFICANT RESOURCES TIED-UP. POST RECOMMENDS THAT FCIA NOT CONSIDER APPEAL TO COURT RULING ON BANKRUPTCY. RATHER, FCIA SHOULD NEGOTIATE WITH DIAMANT IN 30-45 DAYS. IF NEGOTIATIONS TURN UNSATISFACTORY, WAIT FOR TWO YEAR TERM OF THE CONCORDATA ELAPSE. POST LEAVES THE LAWYER PROBLEM TO THE BETTER JUDGEMENT OF FCIA. PERSONAL LEGAL ACTION AGAINST DIRECTORS MAY BE FRUITFUL, HOWEVER, ACTION MAY ALSO BE DEPENDENT ON PHYSICALLY TURNING THE NOTES OVER TO THE COURTS. THIS ENTAILS A RISK THAT THE NOTES MAY BE LOST. IT IS NOT KNOWN WHETHER THE LEGAL SUIT AGAINST THE DIRECTORS OF PARANAPANEMA WOULD ENCOURAGE THE FIRM TO NEGOTIATE

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THE RESCHEDULING OF THE DEBT.
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